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# CALIFORNIA INITIATIVE REVIEW

## Proposition 25: The On-Time Budget Act of 2010 Initiative Constitutional Amendment

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## **I. EXECUTIVE SUMMARY**

For the past forty-eight years, the California budget approval process has required approval by a two-thirds vote in each house of the Legislature.<sup>1</sup> While the annual budget approval process has long been the source of partisan bickering and missed deadlines, citizens' concerns over this often-contentious process have been amplified by one of the worst economic recessions that California has ever experienced.<sup>2</sup>

Proposition 25, the On-Time Budget Act of 2010, aims to reform the budget approval process. Proposition 25 seeks to amend Article IV, Section 12 of the California Constitution and eliminate the two-thirds voting requirement that is currently needed to pass the annual state budget. The amended section would instead only require a simple majority vote in each house for a budget to be approved before being submitted to the Governor.<sup>3</sup> The measure is also designed as a means to pressure lawmakers into passing and enacting a budget on time. For every day that the budget is late, the measure would withhold all salaries and reimbursements from both the Governor and legislators alike.<sup>4</sup>

Proponents of Proposition 25 argue that the measure will break the gridlock in the Legislature that has caused late budgets, which can depress the state economy, disrupt state services, and damage the state's credit rating.<sup>5</sup> Opponents maintain that Proposition 25 will cede too much control to the dominant party in the Legislature and allow the Legislature to sidestep the Constitution's two-thirds legislative voting requirement for raising state taxes.<sup>6</sup>

Early polling released on September 29, 2010, suggests that 48% of likely voters favor Proposition 25, 35% oppose it, and 17% remain undecided.<sup>7</sup>

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<sup>1</sup> CAL. CONST. art. IV, §§ 8, 12; *see also* Glenda Corcoran, *Proposition 56: The Budget Accountability Act of 2004*, CAL INIT. REV., (Spring 2004), *available at* [http://www.mcgeorge.edu/Research\\_Centers\\_and\\_Institutes/Capital\\_Center\\_for\\_Public\\_Law\\_and\\_Policy\\_Home/Publications/California\\_Initiative\\_Review/2004\\_March\\_Initiatives/\\_Proposition\\_56.htm](http://www.mcgeorge.edu/Research_Centers_and_Institutes/Capital_Center_for_Public_Law_and_Policy_Home/Publications/California_Initiative_Review/2004_March_Initiatives/_Proposition_56.htm).

<sup>2</sup> *See* Dan Walters, *Long California budget stalemate could affect Prop. 25*, MODESTO BEE, Jul. 27, 2010, <http://www.modbee.com/2010/07/27/1268163/dan-walters-long-california-budget.html>.

<sup>3</sup> Cal. Proposition 25 § 4(2010).

<sup>4</sup> *Id.* § 2.

<sup>5</sup> *Official Voter Information Guide*, 54, *available at* <http://voterguide.sos.ca.gov/pdf/english/complete-vig.pdf> (accessed Oct. 5, 2010).

<sup>6</sup> Teresa Casazza, *Viewpoints: Prop 25 Won't Fix State's Budget Mess*, SACRAMENTO BEE, July 23, 2010, at 13A.

<sup>7</sup> PUB. POLICY INST. OF CAL., PPIC STATEWIDE SURVEY: CALIFORNIANS & THEIR GOVERNMENT, at 13, *available at* [http://www.ppic.org/content/pubs/survey/S\\_910MBS.pdf](http://www.ppic.org/content/pubs/survey/S_910MBS.pdf) (accessed Oct. 5, 2010).

## II. BACKGROUND AND EXISTING LAW

### d. The Two-Thirds Vote

#### i. *Origins*

Today's process for creating and passing a budget primarily traces its roots to measures approved by Californians in 1922, 1933 and 1962. In 1922, voters approved a constitutional amendment aimed at modernizing the state budget process.<sup>8</sup> The amendment required that the Governor begin the budget process each year by submitting a budget to the Legislature containing itemized statements of all proposed expenditures and estimated revenues for the fiscal year, along with comparisons to the same expenditures and revenues from the previous year.<sup>9</sup> This amendment also granted the Governor a line-item veto power to reduce or eliminate any itemized expenditure in the proposed budget.

In 1933, voters approved a measure that required any appropriation, which exceeded the appropriation in the previous budget year by five or more percent to pass by a two-thirds vote in both the Senate and the Assembly. Because budgets typically increased more than five percent from year-to-year, this proposition effectively required a two-thirds majority vote for the passage of any budget. In 1962, this two-thirds voting requirement was extended to all budgets, regardless of size.<sup>10</sup>

#### ii. *Proposition 56 (2004)*

Submitted to voters in the 2004 spring election, the Budget Accountability Act (Proposition 56) was defeated by sixty-five percent of the vote.<sup>11</sup> The measure's key provisions would have eliminated the two-thirds vote requirement for budget approval in favor of a fifty-five percent vote requirement in each house. The measure would also have required that the Legislature stay in session until a budget was passed and would have docked the pay of legislators and the Governor for each day that the budget was late.

Proposition 56 also sought to reform the manner in which the State's reserve monetary fund was managed. The measure would have established minimum requirements for depositing and withdrawing money from the state reserve fund. The Legislature would have been required to deposit at least 25% of any excess revenues until the reserve reached 5% of the prior year's spending. Reserve funds could only be spent during emergencies and years in which spending exceeded state revenues.<sup>12</sup>

<sup>8</sup> Corcoran, *supra* note 1.

<sup>9</sup> See CAL. CONST. art IV, § 12(a).

<sup>10</sup> Corcoran, *supra* note 1.

<sup>11</sup> *Proposition 56*, <http://www.smartvoter.org/2004/03/02/ca/state/prop/56/> (accessed Oct. 5, 2010).

<sup>12</sup> *Id.*

iii. *Passing the Budget*

The state budget is the primary vehicle by which the Legislature appropriates state spending for the fiscal year, which runs from July 1 to June 30 of the following year.<sup>13</sup> The Governor is required to submit the budget for the upcoming fiscal year by January 10 and the Legislature is required to approve the budget by June 15.<sup>14</sup> Once the Governor receives a budget approved by the Legislature, he may approve or reject the budget in its entirety or exercise his line-item veto power to reject certain parts of the budget.<sup>15</sup> This veto power can only be overridden by a two-thirds vote in each house of the Legislature.<sup>16</sup>

The California Constitution requires a two-thirds majority vote in each house of the Legislature for the passage of measures that take effect immediately.<sup>17</sup> Because the budget includes appropriations that necessarily have immediate effect, passage of the budget requires a two-thirds vote in each house of the Legislature.<sup>18</sup>

While the deadline for the the passage of a budget appears to be strict, the Constitution only mandates the date by which a budget must be passed by the Legislature, not a specific time by which the budget must be enacted into law by the Governor.<sup>19</sup> In making full use of this loophole, the Legislature has seldom met its June 15 deadline for submitting a budget to the Governor and since 1980, has met this deadline just five times.<sup>20</sup> And during this same period, a final budget, approved by both the Legislature and the Governor, has been enacted into law, prior to the start of the fiscal year (July 1), just ten times.<sup>21</sup> Many state expenses are not paid in years where the fiscal year begins without a budget, including payments to various vendors, state employees, and Cal-Grants (financial aid money) to college students.<sup>22</sup>

**e. Other States Requiring Supermajorities For Budget Approval**

Legislatures in nine states have voting requirements that sometimes require a supermajority. Six of these states—Connecticut, Hawaii, Illinois, Maine, Mississippi and Nebraska—require a

<sup>13</sup> LEGISLATIVE ANALYST’S OFFICE, PROPOSITION 25, at 1, *available at* [http://www.lao.ca.gov/ballot/2010/25\\_11\\_2010.pdf](http://www.lao.ca.gov/ballot/2010/25_11_2010.pdf) (accessed Oct. 5, 2010).

<sup>14</sup> CAL. CONST. art. IV, § 12(a).

<sup>15</sup> CAL. CONST. art. IV, § 10(e). The Governor’s line-item veto power is the subject of a recent California Supreme Court Opinion in *St. John’s Well Child And Family Center v. Schwarzenegger*, which upheld the Governor’s ability to use his line-item veto power to veto appropriations in mid-year budget adjustments passed by the legislature. --- Cal.Rptr.3d ---, 2010 WL 3835242 (October 4, 2010) *available at* <http://www.courtinfo.ca.gov/opinions/documents/S181760.PDF>.

<sup>16</sup> *Id.*; LEGISLATIVE ANALYST’S OFFICE, PROPOSITION 25, *supra* note 13, at 1.

<sup>17</sup> CAL. CONST. art. IV, § 8(d).

<sup>18</sup> *Legislative Analyst’s Office, Proposition 25*, *supra* note 13, at 1-2.

<sup>19</sup> *Id.* at 1.

<sup>20</sup> Cal. Proposition 25 § 2(2010).

<sup>21</sup> LEGISLATIVE ANALYST’S OFFICE, PROPOSITION 25, *supra* note 13, at 2.

<sup>22</sup> George Skelton, *Someone Needs to Call the Shots*, L.A. TIMES, Sept. 2, 2010, <http://articles.latimes.com/print/2010/sep/02/local/la-me-cap-20100901>.

supermajority only in very rare instances. Only three states—Arkansas, California, and Rhode Island—typically require a supermajority to pass an annual budget.<sup>23</sup>

The special circumstances that trigger the supermajority requirement vary in the states that only require supermajorities in limited circumstances. In Connecticut and Hawaii, a supermajority is only required when the state exceeds its general fund expenditure ceiling. Illinois requires a three-fifths vote when the Legislature has failed to approve a budget before a constitutionally mandated deadline. Maine and Nebraska have provisions, similar to Illinois, which require a two-thirds vote only when the budget is late and being passed as emergency legislation.<sup>24</sup> Similar to California's specific supermajority requirement for raising taxes, Mississippi requires three-fourths approval in the Legislature for all revenue bills and property tax increases.<sup>25</sup>

Although Rhode Island and Arkansas join California as the only states in the country that require at least a two-thirds vote to pass a budget,<sup>26</sup> California is the only state in the nation that requires a two-thirds vote to pass both budgets and tax increases.<sup>27</sup> In Arkansas, the Legislature is required to obtain a three-fourths majority on appropriations for all purposes other than education, highways, and paying down the state debt. Appropriations for these exceptions require only a simple majority. Although Rhode Island only requires a two-thirds majority for local or private appropriations, the state often drafts major appropriations bills into a single budget bill. This effectively results in a two-thirds majority requirement to pass the budget each year.<sup>28</sup>

### **III. PROPOSED CHANGES TO THE CURRENT LAW**

#### **a. Lowers Legislative Vote Requirements for the Budget and Related Legislation**

If approved, Proposition 25 would amend the Constitution to lower the vote requirement necessary for each house of the Legislature to approve a budget and submit it to the Governor.<sup>29</sup> The voting requirement would be reduced from the current two-thirds majority to a simple majority in each house of the Legislature.<sup>30</sup> This reduced voting threshold for approving a budget would also apply to trailer bills that are identified by the Legislature “as [being] related to the budget in the budget bill.”<sup>31</sup> The measure would not impact the two-thirds majority required

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<sup>23</sup>NAT'L CONFERENCE OF STATE LEGISLATURES, SUPERMAJORITY VOTE REQUIREMENTS TO PASS THE BUDGET, *available at* <http://www.ncsl.org/IssuesResearch/BudgetTax/SupermajorityVoteRequirementsstoPasstheBudget/tabid/12654/Default.aspx> (accessed Oct. 5, 2010).

<sup>24</sup>*Id.* (stating that Connecticut requires a three-fifths majority and Hawaii requires a two-thirds majority approval in the Legislature when the states' expenditure fund ceilings have been expended).

<sup>25</sup> Miss. CONST. art. IV, § 70; *see also* National Conference of State Legislatures, *supra* note 23.

<sup>26</sup> Cal. Proposition 25 § 2 (2010).

<sup>27</sup> George Skelton, *Prop. 25 Is the Real Deal*, L.A. TIMES, July 26, 2010, *available at* <http://articles.latimes.com/print/2010/jul/26/local/la-me-cap-20100726>.

<sup>28</sup> NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 23.

<sup>29</sup> Cal. Proposition 25 § 2 (2010).

<sup>30</sup> LEGISLATIVE ANALYST'S OFFICE, PROPOSITION 25, *supra* note 13, at 2.

<sup>31</sup> *Id.* at 3.

to override a Governor's veto and the text of the measure explicitly states that it is not intended to amend the two-thirds voting requirement for state tax increases.<sup>32</sup>

**b. Forfeiture of Legislators' Pay and Reimbursements For Each Day that the Budget is Late**

The Proposition contains a provision that would prevent legislators from being paid their salaries, as well as reimbursements for travel and living expenses, during the past-deadline (June 15) period. Pay and reimbursements would be suspended beginning June 15 and last until a budget is submitted to the Governor.<sup>33</sup> The legislators would permanently forfeit their benefits—they would not recoup them at a later date.<sup>34</sup>

**IV. PRE-ELECTION CHALLENGES AND DRAFTING ISSUES**

**a. Pre-Election Challenges**

On July 26, 2010, opponents of Proposition 25 filed a lawsuit in an effort to remove language from the measure that they considered misleading. These opponents argued that the provision stating that the measure “retains two-thirds vote requirement (for) taxes” was misleading because the measure makes no substantive reference to the preservation of the two-thirds vote requirement for raising taxes.<sup>35</sup> The opponents acknowledged the initiative's statement of intent, which reads, “This Measure will not change Proposition 13's tax limitations in any way. This measure will not change the two-thirds requirement for the Legislature to raise taxes[.]” However, the opponents argued that statements of intent could not alter the clear substantive provisions of a measure, which they believe would permit tax increases through a simple majority vote.<sup>36</sup> The Superior Court held that the language should be removed, but for a different reason. In a bench ruling, Judge Marlett indicated that the language might mislead voters into believing that they must support the initiative in order to preserve the current two-thirds vote requirement for taxes.<sup>37</sup>

Proposition 25 supporters immediately filed an appeal on August 6, 2010. In an unpublished opinion, the Court of Appeals overturned the lower court's decision and held that

the challenged language does not misleadingly suggest the approval of Proposition 25 is necessary to maintain the existing two-thirds vote requirement for raising taxes. And we find nothing in the substantive provisions of

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<sup>32</sup> Cal. Proposition 25 § 3 (2010); LEGISLATIVE ANALYST'S OFFICE, *supra* note 13, at 3.

<sup>33</sup> Cal. Proposition 25 §§ 2, 4 (2010).

<sup>34</sup> LEGISLATIVE ANALYST'S OFFICE, *supra* note 13, at 3.

<sup>35</sup> Torey Van Oot, *Judge: Ballot Language For Majority-Vote Budget Measure Misleading*, MODESTO BEE, Aug. 9, 2010, *available at* <http://www.fresnobee.com/2010/08/06/2031933/judge-ballot-language-for-majority.html>; Petition for Peremptory Writ of Mandate, *Zaremborg v. Bowen*, No. 34-2010-80000610, at 3 (July 26, 2010), *available at* <http://blogs.sacbee.com/capitolalertlatest/Prop25suit.pdf>.

<sup>36</sup> Petition for Peremptory Writ of Mandate, *supra* note 35, at 3.

<sup>37</sup> Van Oot, *supra* note 35.

Proposition 25 that would allow the Legislature to circumvent the existing constitutional requirement of a two-thirds vote to raise taxes.<sup>38</sup>

Thus, Proposition 25 will be submitted to the voters containing language stating that the measure will not alter the Constitution's requirement that tax increases be approved by a the two-thirds vote in each house.<sup>39</sup>

### **b. Drafting Issues**

Proposition 25 contains a severability clause which purports to allow provisions to be severed from any portions of the initiative that are later found invalid. Specifically, section 5 of the initiative states:

If any of the provisions of this measure or the applicability of any provisions of this measure to any person or circumstances shall be found to be unconstitutional or otherwise invalid, such finding shall not affect the remaining provisions or applications of this measure to other persons or circumstances, and to that extent the provisions of this measure are deemed to be severable.<sup>40</sup>

Although the severability clause found in Proposition 25 contains language that mirrors the severability language used in most initiatives, the mere inclusion of a severability clause is not determinative. If a court finds that a provision of an initiative is unconstitutional, it will apply the three-pronged *Gerken* test to determine whether the unconstitutional provision should be severed. For a provision to survive this test and be severed from portions that are deemed unconstitutional, (1) it must grammatically make sense to sever it; (2) it must be complete and functional in and of itself; and (3) the provision as severed must be something the electorate considered separately and would have adopted without the invalid provisions.<sup>41</sup>

Proposition 25 is clearly drafted and does not appear to contain provisions that would render any part of the measure unconstitutional. Furthermore, the text of the initiative has been carefully structured to preserve the remaining provisions should there be a successful constitutional challenge. Because the text of the initiative has such deliberate grammatical structure, Proposition 25 would likely satisfy the first two prongs of the *Gerken* test.

The final prong of the *Gerken* test is typically the most difficult to satisfy because it calls for *post hoc* analysis. However, because the initiative is limited to two main provisions, both of which are relatively straightforward, a reviewing court would likely find that the electorate separately considered these two provisions, and would have adopted each independently. For these reasons, a reviewing court would likely find that the third prong of *Gerken* has also been met. Having satisfied all three prongs of the *Gerken* test, the measure's valid provisions could be severed from any provision later deemed invalid.

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<sup>38</sup> *Yes on 25 v. Superior Court*, Nos. C065707, C065708 (2010), available at <http://www.leagle.com/unsecure/page.htm?shortname=incaco20100809026>.

<sup>39</sup> Cal. Proposition 25 § 3 (2010).

<sup>40</sup> Cal. Proposition 25 § 5 (2010).

<sup>41</sup> *Gerken v. Fair Political Practices Commission*, 6 Cal. 4th 707, 715 (1993).



## V. CONSTITUTIONAL ISSUES

### a. Federal Constitution

Proposition 25 does not appear to conflict in any way with the United States Constitution.

### b. California Constitution: Single Subject Rule

All California initiatives must conform to the single-subject rule. The California Constitution states that “[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect.”<sup>42</sup> The test created by the California Supreme Court, commonly known as the “reasonably germane test,” does not require that each of the “provisions of a measure effectively interlock in a functional relationship[,]” only that the various components of an initiative measure pursue a common objective. The court in *Senate v. Jones* explained that this test does not mandate that each provision be unified in a functional relationship; rather, “it is enough that the various provisions are reasonably related to a common theme or purpose.”<sup>43</sup>

Proposition 25 does not appear to violate the single subject rule. By (1) lowering the number of votes needed to get the budget passed, and (2) by giving the lawmakers a financial incentive (or disincentive, as it were) to get the budget passed on time, the main provisions of the initiative appear to be *reasonably related* to the common theme of passing of the budget by the July 15<sup>th</sup> constitutional deadline. However, if this initiative were somehow found to violate the single subject rule, it would be invalid in its entirety because the single subject rule does not provide for severability.<sup>44</sup> Despite this remote possibility, the measure’s provisions are reasonably germane to the common theme of getting the budget passed by the constitutional deadline, and likely do not violate the single subject rule.

## VI. IF PROPOSITION 26 PASSES, IT MAY IMPACT SOME PROVISIONS OF PROPOSITION 25

This edition of the CALIFORNIA INITIATIVE REVIEW contains an article that provides an in-depth analysis of Proposition 26.<sup>45</sup> Therefore, the scope of the following section is intended only to address the manner in which Proposition 25’s simple majority requirement might be curtailed by the passage of Proposition 26, in the event that voters approve both propositions.

If passed, Proposition 25 would require only a simple majority for the passage of a budget bill, which may contain trailer bills that the Legislature identifies as “related to the budget in the budget bill.”<sup>46</sup> Proposition 26 however, would place limits on the Legislature’s ability to pass, with a simple majority, bills that contain many types of user fees, regulatory fees and property

<sup>42</sup> CAL. CONST., art. II § 8(d).

<sup>43</sup> 21 Cal. 4th 1142, 1157 (1999).

<sup>44</sup> *Id.* at 1155.

<sup>45</sup> Julia DaVos and Amber Simmons, *Proposition 26: Vote Requirements for State Levies and Charges*, CAL. INIT. REV., (Fall 2010), *infra*.

<sup>46</sup> *Legislative Analyst’s Office, Proposition 25, supra* note 13, at 3.

charges, even if the Legislature determines they are “related to the budget.”<sup>47</sup> Proposition 26 would invoke the two-thirds vote requirement by expanding the definition of “tax” to include many payments that are currently considered fees or charges. It would also broaden the definition of “tax increase” to include any bill that requires any single taxpayer to pay a higher tax, regardless of whether that same bill offers an equal or even larger reduction in taxes for other taxpayers.<sup>48</sup> Thus, while Proposition 25 would require a simple majority in each house of the Legislature to approve a budget bill,<sup>49</sup> if Proposition 26 also passes, any budget bill containing “fees” or “charges” that fall within the expanded definition of tax or increase would require approval by a two-thirds vote in each house of the Legislature.<sup>50</sup>

## VII. POLICY IMPLICATIONS

### a. Proponents’ Arguments

#### i. *Breaks Legislative Gridlock by Allowing a Budget Approval by a Simple Majority Vote in Each Legislative House*

Proponents highlight that California, Arkansas, and Rhode Island are the only states that require a two-thirds vote of the Legislature to pass a budget, and that the two-thirds requirement hurdle is the biggest cause of dysfunction in these states’ legislatures.<sup>51</sup> In California, this claim is evidenced by the fact that in the past 30 years, lawmakers have passed a budget by the June 15 deadline on just five occasions.<sup>52</sup> Furthermore, proponents of the initiative argue that this requirement allows a handful of lawmakers to holdout on approving the budget until their personal pet projects, tax breaks, or special interests groups are satisfied. The proponents of Proposition 25 believe that by requiring only a simple majority, these self-interested lawmakers will lose their bargaining positions and no longer be able to delay the budget.<sup>53</sup>

In response to the opponents’ claim that the measure will discourage bipartisanship and embolden the dominant party, proponents point to the Governor’s line-item veto power, which would still require a two-thirds vote in each house of the Legislature to override the veto.<sup>54</sup> Proponents argue that because this veto power hangs over the Legislature like the Sword of Damocles,<sup>55</sup> the dominant party would continue to have an incentive to reach across party lines, especially in years where the Governor is not a member of the dominant party in the

<sup>47</sup> *Legislative Analyst’s Office, Proposition 26*, 3-4, [http://www.lao.ca.gov/ballot/2010/26\\_11\\_2010.pdf](http://www.lao.ca.gov/ballot/2010/26_11_2010.pdf).

<sup>48</sup> *Id.* at 6.

<sup>49</sup> *Legislative Analyst’s Office, Proposition 25*, *supra* note 13, at 3.

<sup>50</sup> *Legislative Analyst’s Office, Proposition 26*, *supra* note 47, at 3-6.

<sup>51</sup> Skelton, *supra* note 22.

<sup>52</sup> *Legislative Analyst’s Office, Proposition 25*, *supra* note 13, at 3.

<sup>53</sup> OFFICIAL VOTER INFORMATION GUIDE, *supra* note 5, at 54.

<sup>54</sup> CAL. CONST., art IV, § 12(e).

<sup>55</sup> This expression alludes to the legend of Damocles. Damocles was a servant to King Dionysius, and frequently expressed his awe at the power and apparent happiness of his king. The king, tired of such flattery, held a banquet and seated Damocles under a sword that was suspended from the ceiling by a single hair — thus demonstrating that kingship came not only with pleasures, but fears and worries as well. It has come to be understood as an ever-present threat or impending disaster.

Legislature.<sup>56</sup> Ultimately, proponents argue that the current two-thirds requirement has managed to strangle democracy by allowing the minority party to control or obstruct many major decisions in the Legislature.<sup>57</sup>

ii. *Holds Legislators Accountable if They Fail to Pass a Budget on Time*

Each day that the budget is late, state lawmakers would permanently lose their salaries and reimbursements for living and travel expenses. If the budget does not pass on time, the state would save \$50,000 per day in salary and expenses until the budget is passed, thereby mitigating some of the costs associated with the delayed passage of the budget.<sup>58</sup> As lawmakers would not be able to recover these “losses” once the budget is passed, they would have a strong financial incentive to reach an agreement before the June 15<sup>th</sup> constitutional deadline.<sup>59</sup>

Proponents also argue that the measure will force more accountability from both the dominant and minority parties. Currently, the dominant party, which controls both houses in the Legislature, can characterize members of the minority party as obstructionists and thereby blame the minority party for the state’s budget woes. At the same time, the minority can blame the dominant party for the delays, and each has little incentive to compromise. Proponents claim that Proposition 25 will eliminate this endless cycle of blame by making legislators from both parties accountable for the budgets that are passed.<sup>60</sup>

iii. *Late Budgets Waste Money and Cost Jobs*

When the Legislature failed to pass the 2009 budget on time, the state was forced to issue over 450,000 IOUs to state workers, small businesses, and other state contractors. These IOUs cost taxpayers over \$8 million in interest alone.<sup>61</sup> Proponents argue that because the legislature failed to pass the 2009 budget on time, schools were unable to accurately determine what the state’s contribution would be and thus were unable to adequately prepare their budgets. This resulted in the issuance of 26,000 pink slips and 16,000 teachers to be laid off. Additionally, proponents argue that because of the budget delay in 2009, public works projects were suspended, only to be restarted days later. While obviously inefficient, this unnecessary delay cost the taxpayers millions of dollars and damaged California’s credit rating.<sup>62</sup>

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<sup>56</sup> See OFFICIAL VOTER INFORMATION GUIDE, *supra* note 5, at 53.

<sup>57</sup> Pamela M. Parh, *California’s Proposition 25 Would Have Majority Rule on Budgets*, STATELINE, Aug. 6, 2010, available at <http://www.stateline.org/live/details/story?contentId=503753>

<sup>58</sup> *Legislative Analyst’s Office, Proposition 25*, *supra* note 13, at 4.

<sup>59</sup> OFFICIAL VOTER INFORMATION GUIDE, *supra* note 5, at 54.

<sup>60</sup> Editorial, *Yes, and No*, L.A. TIMES, Sept. 30, 2010, available at <http://articles.latimes.com/2010/sep/30/opinion/la-ed-props2526-20100930> (endorsing Proposition 25).

<sup>61</sup> Jennifer Steinhauer, *Coffers Empty, California Pays with I.O.U.’s*, N.Y. TIMES, July 3, 2009, at A1.

<sup>62</sup> OFFICIAL VOTER INFORMATION GUIDE, *supra* note 5, at 54.

- iv. *Preserves the Requirement That a Supermajority Vote is Required to Raise Taxes*

Proponents argue that Proposition 25 has no effect on the two-thirds vote requirement to raise taxes and that the measure focuses only on addressing the two-thirds vote requirement to pass the budget. They point to the text of the initiative itself which states, “This measure will not change the two-thirds vote requirement for the Legislature to raise taxes[,]”<sup>63</sup> and also cite the Attorney General and the non-partisan Legislative Analyst’s Office, who have both stated that the initiative does not alter the two-thirds vote that is required to raise taxes.<sup>64</sup>

**b. Opponents’ Arguments**

- i. *Gives the Dominant Party Too Much Control With No Guarantees that the Budget Will be Passed On-Time*

Opponents argue that the current two-thirds vote requirement preserves needed checks and balances in the Legislature.<sup>65</sup> Based on the current makeup of the Legislature, eliminating the two-thirds vote requirement in favor of a simple majority would allow the dominant party to approve a budget without the support of a single member of the minority party.<sup>66</sup> Opponents argue that this would eliminate bipartisanship in the Legislature and allow the dominant party to freely enact spending programs, taxes, and also reward party supporters and other special interests groups.<sup>67</sup>

Opponents also argue that requiring only a simple majority vote for budget approval would not necessarily ensure the timely passage of the budget.<sup>68</sup> In support of their argument, opponents point to the fact that California was not the only state that began the 2010 fiscal year without a budget. Eight other states failed to pass a budget on time, and all eight of those states require only a simple majority to pass budgets. In addition, Rhode Island and Arkansas, the two states that have a two-thirds vote requirement similar to that of California, both had budgets in place at the start of the fiscal year.<sup>69</sup>

- ii. *Legislators Will Not Be Held Accountable*

Opponents also criticize the provision of the initiative that would permanently withhold pay from lawmakers for each day that the budget is late, as being an ineffective check on the State’s lawmakers. While proponents of the initiative claim that the lawmakers would have an incentive

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<sup>63</sup> Cal. Proposition 25 § 3 (2010).

<sup>64</sup> LEGISLATIVE ANALYST’S OFFICE, PROPOSITION 25, *supra* note 13, at 2.

<sup>65</sup> Skelton, *supra* note 22.

<sup>66</sup> LEGISLATIVE ANALYST’S OFFICE, PROPOSITION 25, *supra* note 13, at 4.

<sup>67</sup> OFFICIAL VOTER INFORMATION GUIDE, *supra* note 5, at 54; CAL-TAX, PROPOSITION 25, at 2, <http://www.caltax.org/issues/Proposition25CalTaxAnalysisPW.pdf> (accessed Oct. 5, 2010).

<sup>68</sup> No on 25 Fact Sheet, <http://www.no25yes26.com/learn-more/no-on-proposition-25-stop-the-more-spending-higher-taxes-measure/no-on-25-fact-sheet-2/>.

<sup>69</sup> OFFICIAL VOTER INFORMATION GUIDE, *supra* note 5, at 54; CAL-TAX, PROPOSITION 25, *supra* note 67, at 2.

to pass the budget on time because they would not be paid or reimbursed for time spent working on a late budget, opponents claim that an obvious loophole would make this provision meaningless. Opponents claim that lawmakers would give themselves pay raises the following year's budget, which would only require a simple majority vote.<sup>70</sup> Thus, any lost wages resulting from budget delays could be made up in future budgets.<sup>71</sup>

In response to the argument that this measure will prevent each party from blaming the other for the State's budget problems, opponents claim that the measure will only serve to remove a necessary restraint on the dominant party's endless spending, thereby making the government less accountable to the people. The budget process would remain broken and the dominant party would have no incentive to work with the minority party in instituting needed reforms.<sup>72</sup>

iii. *A Budget that Rewards Special Interests and Wastes Money Will Hurt California*

Opponents argue that any money saved by the quick passage of the budget will be eclipsed by the tax dollars that will be wasted on rewards to the dominant party's pet projects and special interests groups. The opponents cite wasteful spending as the main source of budget delays and gridlock, and once the minority party is unable to prevent these wasteful programs from being included in the budget, the dominant party will continue deficit spending and only worsen the state's already dire financial crisis. Therefore, opponents maintain that the costs associated with a delayed budget will pale in comparison to the debts that will accrue in the long run, under the dominant party's unchecked control over the budget.<sup>73</sup>

iv. *Legislators Will Be Allowed to Increase Taxes With Only a Simple Majority*

Opponents also maintain that Proposition 25 would allow the Legislature to circumvent the two-thirds voting requirement for tax increases by characterizing tax hikes as "fees" deemed by the Legislature as being "closely related to the budget." And, because these fees would go into effect immediately, voters would not be given the opportunity use the referendum process to stop these fees before they are enacted.<sup>74</sup>

Beyond the Legislature's ability to increase taxes disguised as fees, opponents point to the text of the measure itself as misleading the public into believing that the measure will not eliminate the two-thirds vote requirement for tax increases.<sup>75</sup> While the measure does contain an intent statement indicating that the measure does not intend to eliminate the two-thirds vote requirement for tax increases, opponents argue that an intent statement cannot change the clear substantive provisions of the measure. The measure contains no substantive exception that preserves a two-thirds vote for tax increases, but contains substantive provisions that would

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<sup>70</sup> NO ON 25 FACT SHEET, *supra* note 68.

<sup>71</sup> CAL-TAX, PROPOSITION 25, *supra* note 67, at 2.

<sup>72</sup> *Yes, and No*, *supra* note 60.

<sup>73</sup> NO ON 25 FACTSHEET, *supra* note 68.

<sup>74</sup> CAL-TAX, PROPOSITION 25, *supra* note 67, at 2; Casazza, *supra* note 6.

<sup>75</sup> Petition for Peremptory Writ of Mandate, *supra* note 35, at 3-4.

allow a simple majority to pass a budget bill and appropriations bills related to that budget bill.<sup>76</sup> Opponents claim that the absence of an exception to the simple majority provision for tax increases will allow the Legislature to sidestep the two-thirds vote requirement by characterizing tax increases as being related to the budget, thus allowing the Legislature to enact tax increases by a simple majority vote.<sup>77</sup>

### **VIII. CONCLUSION**

In many ways, the public debate surrounding Proposition 25 reflects the discontent towards both national and local legislatures that has been sweeping the nation. In California, recent polling indicates that the State Legislature's approval rating is just 9%.<sup>78</sup> Perhaps a reflection of this sentiment, Proposition 25 will be included on the November 2010 election ballot.

If approved, Proposition 25 will lower the requisite votes needed to pass a budget bill from two-thirds to a simple majority vote in each house of the Legislature. Additionally, lawmakers will not be paid a salary or reimbursed for their expenses for any amount of time spent working on the budget after the constitutional deadline of June 15.

Proponents argue that these provisions will streamline the budget process and give each individual lawmaker a personal financial incentive to pass the budget on time. Opponents are primarily concerned that these changes will eliminate bipartisanship in the Legislature and allow the dominant party to freely enact spending programs that reward party supporters and special interests groups.

If Proposition 25 is not approved, the passage of the annual budget will continue to require a two-thirds vote in each house of the Legislature. While voters are certainly frustrated with the Legislature's recent track record, it remains to be seen whether Proposition 25 will be the silver bullet that many hope it will be.

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<sup>76</sup> *Id.* at 4.

<sup>77</sup> *Id.* at 3-4; NO ON 25 FACT SHEET, *supra* note 68.

<sup>78</sup> *California Legislature's Approval Rating Hits Record Low*, L.A. TIMES, Mar. 24, 2010, <http://articles.latimes.com/2010/mar/24/local/la-me-poll25-2010mar25>.